

No. 14/13/87-6 Lab./807.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Breweries Ltd., Mirthal, Sonepat *Versus* Rohtas:—

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 314 of 1988.

SHRI ROHTAS S/O SHRI SUBE SINGH C/O BHARTIYA MAZDOOR SANGH, SONEPAT ... Workman

Versus

M/S HARYANA BREWERIES LTD., MURTHAL, SONEPAT.

... Management

Presents :

Shri Bahadur Yadav, A.R. for the workman.

Shri Rajbir Singh, A.R. for the management.

AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department, Endorsement No. SOV/ID/Sonepat/95-88/30137-42, dated 16th June, 1988:—

“Whether the termination of services of Shri Rohtash is justified and in order? If not, to what relief he is entitled?

2. Both the parties were summoned. The workman had filed the demand notice alongwith the reference petition that the workman was working as labourer in the pay of the Rs. 504-50 paise since April, 1982 with the management. The management terminated his services,—*vide* order dated 6th April, 1988 which is against law and rules. The workman had moved the application on 16th October, 1987 and had also given application on 13th October, 1987 taking him back on the service but he was not appointed and his demand letter was filed. In the meantime the management had appointed Jagbir Singh as Enquiry Officer regarding which no information was sent to the workman but the workman had received the letter from Secretary, Haryana Breweries Ltd., Mirthal and the copy of which was sent to Jagbir Singh Saini. The management side had made the statement before Labour Conciliation Officer, Sonepat that the services of the workman were not terminated but he was suspended. The management side had not given him the copy of the allegation letter and he was not demanded any reply and Jagbir Singh, Advocate was appointed as Enquiry Officer and regarding which no information was sent to him and no clarification was demanded from the workman.

3. The workman had written a letter dated 23rd November, 1987 that till matter pending before Labour Conciliation Officer proceedings initiated by him may be suspended.

4. The respondent management had served show cause notice alongwith the report of Enquiry Officer dated 31st December, 1987 of which he had given the reply on 2nd January, 1988 taking the objection that he has no power to come to the decision of dispute but he decided the enquiry.

5. As the workman was not given any suspension amount hence enquiry report is not valid, the workman remained under suspension till 6th April, 1988 and during this period the workman had received a number of message from the management side, demanding from him pardon letter and then he would be taken back on the work but the workman had refused. Hence this petition was filed. Challenging the report of the enquiry Officer alleging it as against law and justice and workman be taken in service.

6. The respondent management had filed the reply making the averments that the workman had misbehaved with Rajinder on 12th October, 1987 and Rajinder Singh, Cashier had made the complaints in writing and on that basis he was suspended. The allegation letter was sent on 13th October, 1987. The management had appointed Jagbir Singh, Advocate who made enquiry and he had called the workman to appear before him at about 3-00 P.M. on 24th November, 1987 but the workman had not appeared. The enquiry report was submitted which is dated 22nd December, 1987 finding that the allegation levelled against him are correct the workman was asked to file the reply within three days and workman had filed the reply dated 2nd January, 1988 and after that finding that explanation submitted by him is not satisfactory, the services

were terminated. Which is legal and binding on the workman. The workman had admitted in Para No. 2 of the petition that he had received one letter from Enquiry Officer and this is wrong to say that he had not received any letter from Enquiry Officer. It is wrong to say that Jagbir Singh, Advocate was not authorised to make the enquiry. He also denied the suggestion that the management had asked the workman to give in writing that he bags pardon as the workman have misbehaved but did not do so hence claim petition is liable to be dismissed.

7. The workman had filed the replication whereby the assertion made by the management were controverted. On the pleadings of the parties, the following issues were framed :—

1. As per terms of reference ?
2. Whether the management conducted a fair and proper enquiry ? OPR.
3. Relief ?

8. Issue No. 2 was treated as preliminary issue and the Court had given the findings on Issue No. 2 holding the enquiry fair to be proper and the issue was decided in favour of the management. My finding on the remaining issues are as under :—

Issue No. 1 :

9. Both the parties have been examined the evidence on issue No. 2 and after decision of Issue No. 2 the management has examined Nehar as WW-1 and who made statement that the applicant came to the department at about 1.00 P.M. for the working on damaged packages. He also made statement that the workman was doing the proper work and he was not under influence of liquor. WW-2 Sewar Ram was made statement that how the workman had came to their section for repairing the damage fact and he was not under the influence of liquor. The workman has also come into witness box as WW-3 and he made statement. The management has examined four witnesses namely Shri Rajinder Singh as MW-3 and who made statement that the workman had come to him under the influence of liquor and he abused the management in the present of Mahender Singh, Randhir, Ram Niwas and Tara Chand and he made the complaint to the management copy of which is Ex. M-W-4/6. MW-2 Randhir Singh, MW-3 Mahender and MW-4 Tara Chand and the evidence thereafter was closed.

10. The learned A.R. for the workman had made submission that all the four MWs are the employees of the management and are supposed to have made false statement in order to save them selves being from dismissed from the services. It is true that all 4 employees who appeared as MWs but it can not be said that they are under influence of the management.

11. It is proved that the workman was not giving the report and which is main point for which workman has placed reliance on 1994 LLJ, 301(SC) between Electronics Corporation of India *Versus* B. Karunakaran holding that the Enquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employees right to defend himself against the charges levelled against him. A denial of the Enquiry Officer report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of principal of natural justice.

12. The case of the respondent is that the workman/applicant had been misbehaved with Rajinder Singh on 12th October, 1987, Rainder Singh, Cashier has made complaint in writing and on that since he was suspended. But as I had decided that the Enquiry Officer has conducted a fair and proper enquiry and decide this issue against the workman. There is no scope for discussion on this point.

13. The learned A.R. for the workman has made submission that taking a Beer the case is not made out for dismissed the workman from service. I do agree with the workman to a prove to be drunk under the influence of Beer and abuse some persons but that cases not sufficient to him a had guilty as to made him to suffer the services as done in the present case. Thus I am of the view that the punishment of dismissal does warrant. The reference was made between Ved Parkash Gupta and Messers Delton Cable India (P) Ltd., cited in 1984 (1) LLJ, 546.

14. I agree with plea of the learned A.R. for the workman that the termination of services unwarrant by facts of this case. I as such set aside the order of termination of services of the workmen and I am of the view that the applicant is entitled to be reinstated but without back wages. As such I decide this issues in favour of the workman.

Issue No. 3 (Relief) :

15. In view of my findings on the above issues I accept the reference petition and order the workman is entitled to be reinstated with continuity of services but without back wages. It is further held that the workman is entitled to be in service of the management. The management was taken in service within three months hence forthwith take in service. He is entitled to get back wages of three months when so ever he is appointed. However, the parties are left to bear their own cost. The reference is answered and settled accordingly.

P. L. KHANDUJA,

The 30th September, 1994.

Presiding Officer,
Industrial Tribunal,
Labour Court, Rohtak.

Endorsement No. Ref. 314-38/2462, dated 30th September, 1994.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal,
Labour Court, Rohtak.

No. 14/13/87-6 Lab./809.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Head Mistress, Vaish Girls High School, Rohtak *versus* Gugan Ram.

IN THE COURT OF P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 372 of 1988.

SHRI GUGAN RAM, S/ O SHRI RAMJI LAL, HOUSE NO. 871/21, GEETA COLONY, ROHTAK,
... Workman

and

THE MANAGEMENT OF M/S. HEAD MISTRESS, VAISH GIRLS HIGH SCHOOL, ROHTAK.

Present :

Shri K. S. Chauhan, A. R., for the workman.
Shri M. C. Bhardwaj, A. R., for the management.

AWARD

Against the previous award of my learned predecessor Gugan Ram had gone to the Hon'ble High Court in the Civil Writ Petition No. 3703 of 1992 and Mr. Justice V. K. Bali has remanded the case back to this Court to consider and discuss solitary statement witness produced on behalf of the management Smt. Lakshmi Jain and has also without remonstrance mentioned as to what was contended in documentation Ex. M-1 to M-7. The case between the parties as under :—

2. In exercise of powers conferred by Sub-Clause (c) Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act), the Governor of Haryana has referred the following dispute between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorsement No. SOV/ Rohtak/122-88/35459-65, dated 1st August, 1988 :—

Whether the termination of services of Shri Gugan Ram is justified and in order? If not, to what relief he is entitled?

3. The claim of the petitioner/workman is that he was working as Peon with the respondent-management for the last 14 years and in the year 1987 after the retirement of chowkidar, he was appointed as a night

chowkidar. During his tenure of service his work and conduct was good and unblemished. He had to work from 8-00 P.M. to 9-00 A. M., the next day, i.e. 13 hours daily and he used to be relieved from duty at about 10-00 A. M. The Headmistress of the School after 10-00 A. M. wanted him to work at her house as a domestic servant. Though he used to work at her house, but he could not satisfy her as she wanted domestic work from him the whole day. She never gave time to him to sleep in the day so that he could perform his duties as night Chowkidar properly. As the workman failed to do the domestic work according to the wishes of the Headmistress, therefore, she became annoyed, started harassing him by giving him various show cause notices with no fault of him. The workman has further pleaded that the Management terminated him on 5th October, 1987 without assigning any reason and that therefore, the order of termination was altogether illegal and unwarranted and against the principles of natural justice. He has also pleaded that since he was permanent employee therefore, he could not be terminated without issuing him a chargesheet and holding a domestic enquiry. The workman has pleaded that he requested number of times to the Management to reinstate him but to no effect. He has therefore, prayed that since his termination was illegal, therefore, he may be ordered to be reinstated with continuity of service and full back wages.

4. In reply, the Managing/respondent had denied the allegations of the workman. It is admitted that the workman had joined the service as Peon in the year 1974 and that lastly at the time of termination, he was working as Chowkidar. It is denied that his work and conduct was satisfactory. It is stated that his explanation was called for theft, wilful absence and negligence etc. a number of times. The insinuations made by the workman against the Headmistress have been denied. It is denied that the Headmistress used to take domestic work from the workman. It is alleged that the workman was not punctual and was engaged in other work and for which he was warned by the Headmistress from time to time. It is alleged that the termination was on account of many serious misconducts perpetuated by the workman. He was also informed of the charges and was asked to improve himself but to no effect. It is denied that the termination of the workman amounted to retrenchment.

5. In his replication, the workman has denied the various pleas projected by the management and he has re-asserted his case. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the respondent is not an industry as defined in Section 2 (j) of the I. D. Act, 1947 OPR.
- (2) As per terms of reference ?
- (3) Relief ?

6. The workman in order to prove his case has examined himself as WW-1. On the contrary, the management has examined MW-1 Smt. Lakshmi Jain, Headmistress.

7. I have appraised the entire record and have also heard the learned Authorised Representatives of the parties. My findings on the above issues with reasons thereof are as under :—

Issue No. 1 :—

8. Admittedly, the respondent is a private educational institution. In 1987 (2) LLN, 573, (Madhya Pradesh High Court) R. C. K. Union versus Raj Kumar College, it was held that the management of a private educational institution is an industry, Fusing reliance on the ruling (Supra), I hold that the respondent/management is an industry. This issue is decided against the management.

Issue No. 2 :—

9. Documents of the management are Ex. M-1 to Ex. M-7. As I have directed by the Hon'ble High Court to discuss the statement of Smt. Lakshmi Jain, Headmistress and discussed the documents which are Ex. M-1 to M-7. The statement made by Smt. Lakshmi Jain is that the workman did not work properly despite writing of letters Ex. M-1 to M-7. He did not open lock. Students and teachers were standing outside going inside the lock school was opened. As the school room was not properly closed, there was loss to the electricity, tubes broken and as such the workman was removed from job. She has also made statement that she never asked the applicant to work in her house.

10. The documents Ex. M-1 to M-7 are regarding notices served upon the workman as to why he had not worked properly. Ex. M-2 is the complaint made by teacher to the Headmistress that workman was never available in the school, Ex. M-3 is the note given by Smt. Lakshmi Jain that Gugan Ram had open the school late and students and teachers has been standing outside the school on 29th September, 1984. Gugan Ram had made statement that he would take care in future. Notice was sent to Gugan Ram which Ex. M-4 by Headmistress of the School that as the bricks the floor was outside the floor and he has not informed the Headmistress whereas he was required to inform and he is required to be vigilant in future. Ex.

M-5 is the notice sent by Gugan Ram that despite warning he was not punctual in opening the school and it was issued on 17th February, 1987. Ex. M-6 is the notice given to Gugan Ram since the fitting of the electricity was not in order the tubes were broken and he required to explain the reason as to why the action not to be taken against him. Ex. M-7 is notice to Gugan Ram with that the lock of the school was broken and he required to explain the reasons. From the discussion the evidence it is very much clear that the applicant has been negligent in performance of duty. It is also proved that the petitioner had joined the service as peon in the year 1974 and was working as chokwida in the year 1987 so he had completed one year of service in the meaning of Section 25-B of the Act.

11. It is not disputed that the management while terminating the workman had not complied with the provisions of Section 25-F of the Act and if not complied with the terms it becomes void *ab initio*.

12. After going from the statement of MW-1 Smt. Lakshmi Jain and documents it is proved no doubt that the workman was guilty of wilful negligence of duty and for the same reason he was terminated and its termination, therefore, did not amount to retrenchment. Then It was not bound to follow the provision of Section 25-F of the Act.

13. In view of the above evidence on record and in view of discussion by my learned predecessor and by the Hon'ble High Court I hold that the workman had been wilful negligent in performing his duty. There was no need serve him notice, notice pay and retrenchment compensation etc. as required under Section 25-F of the Act. As the workman has retired the age of 60 years and he has been retired on 31st March, 1993, his claim to continue in service fails. But Hon'ble High Court has ordered the management to pay the petitioner wages from 5th October, 1987 till the date of award which amount was paid to him and there is no dispute about it. Now the question remained whether the petitioner is entitled to whole claim. I am of the view that as the workman has proved wilful negligent in performing his duties and disobeyed the order of the management and did not perform his duties despite given of notice as such I am of the view that the petitioner is not entitled to back wages and I decide this issue against the workman and in favour of the management.

Issue No. 3 (Relief) : -

14. In view of my finding on the above issues, I hold that the workman is not entitled to any relief. The reference is answered and returned accordingly, with no orders as to costs.

P. L. KHANDUJA,

22nd September, 1994

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endosment No. ref. 372-88/2459, dated the 30th September, 1994

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab./811.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Gaur Brahman Vidya Parcharini Sabha, Rohtak *versus* Ram Lal.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 67 of 1991

between

SHRI RAM LAL S/O SHRI DWARKA PARSHAD, HOUSE NO. 376, SONEPAT ROAD, ROHTAK.

... Workman

versus

THE MANAGEMENT OF M/S. GAUR BRAHMAN VIDYA PARCHARINI SABHA, ROHTAK
(2) GAUR BRAHMAN, AYURVEDIC COLLEGE, ROHTAK

Present :

Shri V. S. Singal Authorised Representative for the workman,

None for the management (*ex parte*).

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorsement No. SOV/ID/Roh/34-91/11164-69, dated 26th March, 1991 :—

Whether the termination of services of Shri Ram Lal, is justified and in order? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was working with the management as Mali and getting Rs. 1090 P.M. since 1st August, 1988 and since then the work and conduct of the workman was always quite satisfactory and never had given any chance of any complaint during his service period. The management terminated the services of the workman on 1st January, 1990 without assigning any reason or reasonable cause and even the service record of the workman was spotless. The workman has completed more than 240 days in a calendar year, therefore, he is entitled to be heard before giving any sort of punishment to him. Therefore, the above said termination is absolutely illegal, unwarranted, unconstitutional against the provisions of law and also against the principle of natural justice. Such type of termination also amounts to unfair labour practice. At the time of termination no notice was given to the workman, no enquiry was held by the management, no seniority list was displayed at the time of termination, no notice to the workman, no notice was sent to the Government in the prescribed form, no charge sheet was issued to the workman and no retrenchment compensation was paid to the workman, therefore, the management have contravened Section 25-F of the Industrial Disputes Act, and the mandatory provisions of chapter 5-A of the Industrial Disputes Act were not complied with. The management have also appointed some other person in place of the workman and the management have not adopted the mandatory procedure of last come first go, therefore, the management have contravened Section 25-F and H of the Industrial Disputes Act. Hence the claim statement was filed by the workman that he is entitled to be reinstated with continuity of service and full back wages and other resultant benefits.

3. The management has filed the written statement that present statement of claim is bad in law; the petitioner was never dismissed or retrenched from service, he himself abandoned the services at his own; the reference is not maintainable in the present form; it is denied that the work and conduct of the workman was always satisfactory and the applicant had himself abandoned the service at his own accord and the claim statement is liable to be dismissed with costs.

4. The replication was filed by the workman. On the pleadings of the parties, the following issues are framed :—

- (1) As per terms of reference?
- (2) Whether the claim statement is bad in law?
- (3) Whether the workman had abandoned the job?
- (4) Relief?

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1

6. The workman has come into witness box as WW-1, closed the evidence. The management has not appeared and was proceeded *ex parte*.

7. The workman made statement that he was appointed as Gardner by the respondent on 1st January, 1988 and he was retrenched from job on 1st January, 1990 without giving any notice or reasons, notice pay and retrenchment compensation etc. Shri Ram Lal had made statement that after his removal one more person has been kept as Gardener. Suggestion was made to the workman that he had left the services himself and he was never dismissed by the management does show that the management can not claim that the workman had served for less than 240 days in a year. He had served 240 days in a year suggestion has not been made that the workman for how long served in the department. The suggestion was made to the workman that he himself left the job but the management has not produced any documentary evidence on record to prove that the workman had left the service. The evidence of the workman is thus liable to be accepted. The statement made by the workman is true that it means that the workman has served for more than 240 days in a year, his removal was retrenched under Section 25-F of the Industrial Disputes Act. As he was not given any notice, notice, pay or retrenchment compensation. The reference as such of the workman is accepted and I decide this issue in favour of the workman.

Issues No. 2 and 3.

8. Both these issues are not pressed or argued by the parties. Hence I decide both these issues against the management.

Issue No. 4 (Relief)

9. In view of my findings on the above issues, I accept the reference petition and claim statement filed by the workman and I order that he is liable to be posted as gardener from back date when he was removed from job but 50% of back wages. However, the parties are left to bear their own cost. The reference is answered and returned accordingly.

P. L. KHANDUJA,

The 4th October, 1994.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. ref.67—91/2682, dated 20th October, 1994

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab./813.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of The Principal, CRA College (Girl Wing & Sonepat versus Pushpa Devi.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 67 of 1992

between

SHRIMATI PUSHPA DEVI W/O SHRI SULTAN SINGH, WEST RAM NAGAR,
SONEPAT .. *Workman*

and

(1) PRINCIPAL, C.R.A. COLLEGE (GIRLS WING), SONEPAT.

(2) SECRETARY, M. C. TIKA RAM SOCIETY OF EDUCATION, SONEPAT .. *Management*

Present :

Shri. H. R. Vats, Authorised Representative for the workman.

Shri. D. C. Gandhi, Authorised Representative for the management.

AWARD

In exercise of the powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication, —vide Labour Department Endorsement No. SOV/Soni/8-92/13607—13, dated 10th March, 1992 :—

Whether the termination of services of Smt. Pushpa Devi is justified and in order? If not, to what relief she is entitled?

2. The workman and the management were summoned. The workman has filed her claim statement that she was appointed as Peon on 17th September, 1990 in the C.R.A. College (Girl Wing), Sonipat. The service record of the workman was throughout good and unblemished. She was drawing Rs. 900 P. M. as pay. The management terminated the services of the workman on 4th September, 1991 without any reason and that action amounts to retrenchment under Section 2(oo) of the Industrial Disputes Act. That no notice, notice pay, retrenchment compensation was given and paid to the workman which was mandatory under Section 25-F (a)(b) of the Industrial Disputes Act. The Juniors to the workman are still working with the respondent. Hence this claim statement is filed that she be reinstated with continuity of service and full back wages and other benefits.

3. Written statement is filed by the respondent that present application for statement of claim is not maintainable; the workman has no authority as well as *locus standi* to file the statement; that the workman has not filed this statement of claim cleanly, hands; that this Court has no jurisdiction to try and entertain this statement of claim; that the workman has no cause of action to file the present statement of claim; that the workman was estopped by his act and conduct to file the present statement of claim and principle of estoppel is applicable; the workman was on daily wages and did not come to the College permanently and the services record of the workman was not good and sufficient. The workman was terminated. *Vide* resolution dated 30th August, 1991 by the President of the Management and other members that all the employees appointed on unsanctioned posts by the previous illegal management/Governing Body, would be removed. The work and conduct of the workman was not satisfactory; the management can only appointed the candidates on the sanctioned posts after advertising the posts in the local news paper as well as through the employment exchange but the workman did not fulfill the requirement for the alleged post required by the Government of Haryana. The notice was also served and resolution copy was also given to the workman by the management. Hence the claim statement is liable to be dismissed and the respondent is entitled to get the special costs under Section 35-A of C.P.C.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :

- (1) Whether the claim statement is not maintainable in the present form?
- (2) Whether the workman has no *locus standi* and cause of action to file the case?
- (3) Whether the Labour Court has no jurisdiction to try the case?
- (4) Whether the workman is estopped from filing the case?
- (5) As per terms of reference?
- (6) Relief?

5. My findings on the above issues with reasons thereof are as under :-

Issue No. 5 :

6. The workman has come into witness box as WW-1 and closed the evidence. The management could not examine any evidence. Nothing was on record despite second chance and the evidence of the management was closed by the Court orders.

7. From the statement of the workman it is proved that she was appointed as Peon on 17th September, 1990 on pay of Rs. 900 P.M. and her services was satisfactory and there was no complaint etc. She also made statement that she had worked upto 4th September, 1991 and she was retrenched without making payment of notice or retrenchment compensation etc. She also made statement that on removal Luxmi and Rajo juniors to her are still workman with the respondent. She admitted that she was appointed as daily wagers and she is having no appointment letter. She admitted that hostel is a part of Tika Ram Girls College. She also admitted that Luxmi and Rajo are also working in the girls hostel.

8. Now the only submission made by learned Authorised Representative for the management is that since the workman was appointed not by the authorised management committee and when the

managing committee was constituted it had terminated the services of all the person appointed by the unauthorised managing body. This plea is not authenticated when the management issuing the appointment letter and there and then the said committee is not challenged by employees and the present management is challenging the unauthorised previous management body. It is clearly shows said plea is to mark the case of the applicant.

9. The learned Authorised Representative for the management also made submission as the workman has not completed one year of service and as the workman who so completed 240 days in a year and above retrenchment without compliance of Section 25-F termination order can be said at mutuity.

9. When the workman has completed one year of service, the theme of Section 2(oo) of the Industrial Disputes Act, is that for workman who completed 240 days in one year he can not be removed unless removal takes the place under Section 25-F of the Industrial Disputes Act. It is laid down that a workman who completed one year of service and not 240 days of service. Hence I do not find force in the argument of the learned Authorised Representative for the management. The next plea of the learned Authorised Representative for the management is that C.R.A. College is different from Tika Ram College. It is not doubtful that the management had taken the plea that Tika Ram College is different from C.R.A. College but the case of the workman that she served the C.R.A. College for more than 240 days in a year. She did not allege that she never served in Tika Ram College there may be different college by the name of Tika Ram College. I am to decide the case of the workman whether she has worked for 240 days in a year or not. I have already held that the workman served the respondent for more than 240 days in a year.

10. The learned Authorised Representative for the management also referred the orders passed by the Hon'ble High Court on 31st May, 1991 in the Civil Writ Petition No. 975 of 1990. The Hon'ble High Court held that it is desirable that election be held for electing the office bearer of the society and for the governing body of the educational institutions contained by the Society in accordance with Constitution of the society. The judgement of the Hon'ble High Court is on the other point and nothing in the present case. I have concluded that the workman has served 240 days in a year and she was given appointment by the first governing body and that governing body is not held to be illegally constituted body.

11. For the reasons that the workman has served for more than 240 days in a year. I am of the view that the reference petition is maintainable so I accept the reference petition and I decide this issue in favour of the workman.

Issues No. 1 to 4 :

12. All these issues are not pressed or argued by the parties. Hence I decide all the issues against the management.

Issue No. 6 (Relief) :

The workman is entitled to be reinstated with continuity of service but with 50% of back wages. However, the parties are left to bear their own costs. The reference is answered and returned accordingly.

The 7th October, 1994

P. L. KHANDUJA
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 2684/, dated the 20th October, 1994

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Department, Chandigarh.

P. L. KHANDUJA

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.